Dissenting Opinion of Commissioners Lynch and Wood
(Pacific Gas & Electric Company – Bankrupcy Case
Agenda Item #27, February 26, 2004)

We dissent on the basis that this decision is misleading in what it claims to do and in how it claims to do it. There is no reason why this decision could not have waited 3 more weeks except that this Commission wanted to give credit to the bankruptcy settlement approved last December. In our rush to judgment today, we are leaving some money off the table.

First, the decision purports to implement rate reductions contemplated in the PG&E bankruptcy decision. And, secondly, it claims to do so by reversing the revenue surcharges ordered by this Commission in response to the energy crisis through a methodology consistent with the principles used to allocate Edison's post-PROACT revenue requirement reductions. These are goals that we fully support and endorse.

However, we want to make it clear that this decision does not fully implement the reductions contemplated in the bankruptcy decision – this decision primarily implements PG&E's GRC revenue requirement settlement on an interim basis. And even this is not completely true as will be explained below.

It is true that the creation of the regulatory asset provides for reductions in headroom. However, we are troubled that what this settlement includes as 2003 headroom amortization is not the entire amount of excess headroom for 2003. This settlement includes only $95 million of 2003 excess headroom. Energy Division analysts have estimated that the actual amount for excess 2003 headroom will be on the order of $300 million. PG&E's comments on the draft decision had increased its initial amount of $95 to approximately $160. We are not completely satisfied that we are including all the 2003 excess headroom – we are certainly short by at least $70 million by PG&E's own estimate, and by as much as $200 million according to the Energy Division. Instead, this decision adopts only $95 million from PG&E's initial filing and allows for a future "true-up" of the 2003 headroom in Phase 2 of the PG&E GRC proceeding, which will not be resolved for many months. It is unfortunate that this Commission is so intent to get $800 million rate reduction now that it's willing to pass up an opportunity to lower rates by an additional $200 million.

The settlement adopts adjustments to the regulatory asset of about $190 million. On February 25, 2004, PG&E announced a settlement agreement with Williams of $75 million, which is not included in this decision and which, if applied to the regulatory asset, could reduce the revenue requirement by approximately an additional $50 million. We've maintained that the regulatory asset is too large and PG&E's 10-K filings to the SEC on February 19, 2004, reveal that indeed it could be smaller. On February 20, 2004, for instance, the San Francisco Chronicle noted that the PG&E ended 2003 with $3.4 billion in cash. This is $1 billion more than the modified bankruptcy settlement

agreement included in its calculations to derive the regulatory asset - $1 billion in cash that could be used to reduce the regulatory asset on a one-for-one basis. The terms of the modified bankruptcy settlement does require that reductions flow directly through to reduce the regulatory asset eventually. Unfortunately, this decision does not allow us to apply this extra $1 billion to the regulatory asset before bonds are issued, with the result that ratepayers will pay higher financing costs for any possible dedicated rate component re-financing.

The decision proposes to allocate the reductions similar to how they were allocated for Edison. Unfortunately, under the settlement we adopt today, PG&E's allocation methodology gives much less benefits to the residential customers than the PROACT did. Under the settlement, residential customers only receive 50% of the system average decrease, where as they received 60% of the system average decrease in Edison and where they would have received 70% of the system average decrease if we were to reduce rates based on how the 4.5 cents revenue surcharges were placed in the first place. This outcome hardly seems equitable when we also note that the settlement provides for rate reductions of 8% higher for commercial/industrial customers than they would have received if we were to have made the reductions in the same manner as the revenue surcharge increases.

Finally, this decision primarily implements on an interim basis the revenue requirement settled in the GRC. However, again this isn't completely true. This decision's unwavering desire to not increase rates for any customer will force PG&E to go through various machinations on their bills to properly implement today's decision. As proposed in the GRC settlement agreement, distribution rates will increase by more than $200 million while generation rates will substantially come down (mostly due to reduction in headroom). Now that PG&E is finally moving to bottoms-up billing, direct access customers will be paying all the unbundled rate components except for the generation component. By forcing PG&E not to increase rates for any customer, direct access customers will not see an increase in their distribution component. Instead, bundled customers' generation rates will be higher than otherwise would be in order to offset the undercollection produced by the lower distribution rates that PG&E will have to continue on customers bills until the end of Phase 1. At a time when the Direct Access Cost Responsibility Surcharge (CRS) undercollection is increasing by about $55 million because of the regulatory asset, we are needlessly further adding to the CRS accrual through direct access distribution undercollections by another $18 million. There is simply no basis for this.

Again, these are technical matters; certainly a 3-week delay could have helped produce a better outcome. However, that opportunity wasn't afforded. Rates are high

and should be reduced – they can be reduced. But we want to make it clear that the bankruptcy settlement is not the source of today's reduction. PG&E has been overcollecting enormous amounts of money because of high rates and increased sales. This is again another example of how a needless rush to judgment comes at the expense of those ratepayers which can least afford it.

/s/ CARL WOOD
Carl Wood
Commissioner

/s/LORETTA LYNCH
Loretta Lynch
Commissioner

San Francisco, California
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